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FILED

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DEPT. OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation against) No. H-41366 LA
)
JOSEPH GEORGE CAFFERY, doing)
business as Caffery Financial,) ACCUSATION
)
Respondent.)
)
)
)

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, for cause of Accusation against JOSEPH GEORGE CAFFERY, doing business as Caffery Financial, ("Respondent") alleges as follows:

1.

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

2.

All references to the "Code" are to the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, of the California Code of Regulations.

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1 LICENSE HISTORY

2 3.

3 a. Respondent JOSEPH GEORGE CAFFERY is presently licensed and/or has
4 license rights under the Code, as a real estate broker, Department of Real Estate ("Department")
5 license ID 00880650.

6 b. The Department originally issued Respondent a real estate salesperson license
7 on February 8, 1985.

8 c. On April 16, 1990, the Department issued Respondent a broker license, which
9 is scheduled to expire April 15, 2022, unless renewed.

10 d. According to the Department's records to date, Respondent's main office
11 address is 49-340 Montpelier Drive, Indio, California.

12 e. According to the Department's records to date, Respondent employs one (1)
13 salesperson under his real estate broker license.

14 f. From October 6, 2005 to August 10, 2015, and from September 9, 2015 to the
15 present, Respondent has maintained the authorized fictitious business name "Caffery
16 Financial."

17 (PRIOR LICENSE DISCIPLINARY ACTION)

18 4.

19 On or about September 3, 2014, the Bureau of Real Estate¹ filed an Accusation
20 in Case No. H-39588 LA, against Caffery Financial Inc. and Respondent, individually and as
21 designated officer of Caffery Financial Inc., based on an audit examination of Caffery Financial
22 Inc's mortgage broker activity.

23 5.

24 On or about May 11, 2015, Respondent executed a Stipulation and Agreement
25 ("Stipulation") in Case No. H-39588 LA where Respondent stipulated to the acts and omissions
26

27 ¹ Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate as part of the
Department of Consumer Affairs.

1 in the Accusation as grounds for disciplinary action in that he, individually and as designated
2 officer of Caffery Financial Inc, committed violations of the Real Estate Law and Regulations.
3 On July 15, 2015, the Real Estate Commissioner adopted the Stipulation as his Decision and
4 ordered the suspension of Respondent's real estate broker license for 90 days. Said suspension
5 was stayed for 30 days on the condition that Respondent pay a monetary penalty. The remaining
6 60 days were stayed under certain terms and conditions.

7 (AUDIT)

8 6.

9 At all times relevant herein, Respondent engaged in mortgage loan brokering
10 within the meaning of Section 10131(d) of the Code, including the solicitation of borrowers or
11 lenders for and/or negotiating loans, collecting payments and/or performing services for
12 borrowers or lenders in connection with loans secured by liens on real property or on a business
13 opportunity for compensation or in expectation of compensation.

14 7.

15 On or about May 30, 2018, the Department completed an audit examination of
16 the books and records of Respondent pertaining to the real estate activities described in
17 Paragraph 6 above. The audit examination covered the period of time from August 11, 2015
18 through March 31, 2018 ("audit period"). The primary purpose of the examination was to
19 determine Respondent's compliance with the Real Estate Law and the Commissioner's
20 Regulations. The audit was limited to Respondent's mortgage loan broker activity. The audit
21 examination revealed violations of the Code and the Regulations as set forth in the following
22 paragraphs, and more fully discussed in Audit No. SD170047 and the exhibits and work papers
23 attached to said audit report.

24 8.

25 On April 24, 2018, the Department auditor interviewed Respondent. According
26 to Respondent and the documents examined, Respondent was engaged in negotiating hard
27 money loans for borrowers and private investors. During the last twelve months of the audit

1 period, Respondent closed 9 non-institutional loans with private investor's funds. All of the
2 hard money loans negotiated were for investment purposes and non-owner occupied properties.
3 According to Respondent, he did not negotiate any multi-lender loan transactions during the
4 audit period nor was he an escrow holder for any loan transactions that closed during the audit
5 period. According to Respondent, he did not maintain a trust account in connection with his
6 mortgage loan broker activity during the audit period.

7 Violations

8 9.

9 The audit examination revealed violations of the Code and the Regulations, as
10 set forth in the following paragraphs, and more fully discussed in Audit No. SD170047 and the
11 exhibits and work papers attached to the audit report:

12 (a) Notification of Threshold Status – Loan Negotiation (Code sections
13 10232(b) and 10232(e)). During the audit period, Respondent negotiated a combination of two
14 or more new loans of an aggregate amount of more than \$250,000 in three successive months
15 and/or a combination of five or more new loans of an aggregate amount of more than \$500,000
16 in six successive months. Respondent failed to notify the Department within 30 days of
17 expecting to meet these reporting criteria in violation of Code sections 10232(b) and (e). For
18 example:

<u>Time Period</u>	<u>Number of Loans Closed</u>	<u>Total Amount</u>
19 10/2016-12/2016	3 loans	\$350,000
20 7/2016-12/2016	5 loans	\$580,000
21 5/2017-7/2017	3 loans	\$475,000
22 1/2018-3/2018	3 loans	\$280,000

23 (b) Fiscal Year Reports – Mortgage Loan/Trust Deed Annual Report (Code
24 section 10232.2(c) and Regulation 2849.01). Respondent failed to file with the Department
25 the Mortgage Loan/Trust Deed Annual Report (Business Activity Report) for the year ending in
26 2016 and for the year ending in 2017 within 90 days after the end of Respondent's fiscal year
27

1 December 31, 2016 and December 31, 2017, respectively, in violation of Code section
2 10232.2(c) and Regulation 2849.01.

3 (c) **Lender's Signed Statement Indicating Percentage of Investment (Code**
4 **section 10232.3(b))**. Respondent failed to retain the lender's signed statement indicating that
5 the lender's investment in the transaction does not exceed either 10% of the lender's net worth
6 or 10% of the lender's adjusted gross income in all of the loan files sampled for examination in
7 violation of Code section 10232.3(b). For example: Loan numbers 9961-D, 9962-D, 10180-D,
8 6929-MR, 10408-C, and 10424-C.

9 (d) **Investor Questionnaire/Suitability (Code section 10232.45)**. Respondent
10 failed to obtain a completed investor questionnaire from the investors or to determine the
11 investor's suitability (DRE form RE 870) for all of the loan files sampled for the audit
12 examination in violation of Code section 10232.45. For example: Loan numbers 9961-D, 9962-
13 D, 10180-D, 6929-MR, 10408-C, and 10424-C.

14 (e) **Written Disclosure Statement/Approved Borrower Disclosure Statement**
15 **for Nontraditional and Subprime Mortgage Products**. Respondent failed to deliver to the
16 borrowers the Mortgage Loan Disclosure Statement (DRE form RE 885) within three business
17 days after receipt of a completed written loan application in most of the loan files sampled for
18 the audit examination. For example: Loan numbers 10180-D, 6929-MR, 10408-C, and 10424-
19 C.

20 10.

21 Each of the foregoing violations in Paragraphs 9(a)-(e) above constitute cause
22 for the suspension or revocation of the real estate license and/or license rights of Respondent
23 under the provisions of Sections 10177(d), and/or 10177(g).

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